

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EMIGUELA PACI,)	
)	14-cv-1158
Plaintiff,)	
)	Hon. Sharon Johnson Coleman
v.)	
)	
ELMHURST AUTO WERKS, LTD, d/b/a)	
ELMHURST BMW, LTD.,)	
)	
Defendant.)	

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Defendant, ELMHURST AUTO WERKS, LTD. d/b/a ELMHURST BMW, LTD., by and through its counsel, LANGHENRY, GILLEN, LUNDQUIST & JOHNSON, LLC, and in support of its Motion for Summary Judgment in favor of the Defendant and against the Plaintiff, EMIGUELA PACI pursuant to Federal Rule of Civil Procedure 56, submits its Memorandum of Law in Support of its Motion as follows:

INTRODUCTION

Plaintiff's class action complaint asserts violations the Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681c(g)(1) ("FACTA") amendment to the Fair Credit Reporting Act against Defendant, Elmhurst Auto Werks, Ltd. d/b/a Elmhurst BMW, Ltd. ("Elmhurst Auto Werks"). In summary, Plaintiff claims that she provided her Visa debit card to the Defendant on two separate occasions: January 8, 2014 and February 11, 2014. With regard to the first occasion, based upon information and belief, the Plaintiff claims that she received a receipt that contained her Visa debit card's expiration date, without truncation and in violation of FACTA. Regarding the second occasion, the Plaintiff claims that she engaged in a "transaction" with the

Defendant, and received a “receipt” containing her Visa debit card’s expiration date in violation of FACTA.

However, the receipt generated from the sale on January 8, 2014 truncated all but the last four digits of the Plaintiff’s Visa debit card, and did not include the card’s expiration date. The receipt does not violate the truncation provisions of FACTA set forth in 15 U.S.C. § 1681c(g)(1). Moreover, the Plaintiff did not engage in a “transaction” with the Defendant on February 11, 2014, and she was not provided with a receipt. Instead, she was provided with a copy of a contract – more specifically, the “BMW Rental Agreement for Temporary Substitute Vehicle”, which contained a section titled “Method of Payment” in the event the Plaintiff was charged for certain items under the agreement, such as extra gas or mileage. The Plaintiff was not charged for any services under this agreement, on her Visa debit card or otherwise, but in any event, the “BMW Rental Agreement for Temporary Substitute Vehicle” does not constitute an actionable “receipt provided to the cardholder at the point of the sale or transaction” under 15 U.S.C. § 1681c(g)(1). As a result, Defendant should be granted summary judgment on both the Plaintiff’s individual and class action claims.

STATEMENT OF FACTS

1. The Plaintiff, EMIGUELA PACI, individually and on behalf of a proposed class (hereinafter referred to as the “Plaintiff”) has filed her class action complaint, alleging violations of FACTA against Defendant¹. A true and accurate copy of the Plaintiff’s Class Action Complaint is attached hereto as Exhibit “A”.
2. Specifically, the Plaintiff alleges that on February 11, 2014, the Plaintiff used her Visa debit card in regard to a “transaction” with Defendant, and Defendant’s employee “provided

¹ Plaintiff has subsequently filed her Motion to Amend Complaint, which is scheduled for presentation to the Court on April 3, 2014 at 11:00 a.m.

Plaintiff an electronically printed receipt at the point of sale that contained her Visa debit card's expiration date." Ex. "A", ¶¶ 20 – 22.

3. Plaintiff further alleges that on January 8, 2014, she used her Visa debit card in regard to a transaction with Defendant, and "on information and belief", Defendant "provided Plaintiff an electronically printed receipt at the point of sale that contained her Visa debit card's expiration date. Plaintiff cannot locate this receipt." Ex. "A", ¶¶ 23 – 24.

4. A true and accurate copy of the January 8, 2014 receipt is attached hereto as Exhibit "B". See the Affidavit of Brian Schiele, attached hereto as Exhibit "C", ¶ 4.

5. The January 8, 2014 receipt truncates all but the last four digits of the Plaintiff's Visa card, and does not contain the expiration date for the Plaintiff's Visa Card. Ex. "B".

6. A true and accurate copy of the February 11, 2014 "BMW Rental Agreement for Temporary Substitute Vehicle" is attached hereto as Exhibit "D" (the "BMW Rental Agreement"). See the Second Affidavit of Brian Schiele, attached hereto as Exhibit "E", ¶ 4.

7. Defendant did not charge the Plaintiff for any of the goods, services, fuel, rates or supplies itemized in the attached BMW Rental Agreement from February 11, 2014 through the present, including but not limited to on the Visa card referenced in the "Method of Payment" section on the BMW Rental Agreement. Ex. "E", ¶ 5.

8. Elmhurst Auto Werks did not charge the Plaintiff for any goods, services, fuel, rates or supplies on February 11, 2014, including but not limited to on the Visa card referenced in the "Method of Payment" section on the BMW Rental Agreement. Ex. "E", ¶ 6.

9. Elmhurst Auto Werks did not issue a receipt to the Plaintiff or anyone else in conjunction with the attached BMW Rental Agreement, including but not limited to a receipt from a terminal for a point of sale or transaction. Ex. "E", ¶ 7.

APPLICABLE LAW

FACTA, as reflected in 15 U.S.C. 1681c(g) provides as follows:

“(g) Truncation of credit card and debit card numbers.

(1) In general. Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

(2) Limitation. This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(3) Effective date. This subsection shall become effective--

(A) 3 years after the date of enactment of this subsection [enacted Dec. 4, 2003], with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(B) 1 year after the date of enactment of this subsection [enacted Dec. 4, 2003], with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.”

15 U.S.C. 1681(c)(g)(2010).

The Fair Credit Reporting Act (“FCRA”) and FACTA do not define a “receipt”, “point of sale” or “transaction”. 15 U.S.C. 1681a. “Dictionaries are a helpful resource in ascertaining the common meaning of terms that a statute leaves undefined.” *Shlahtichman v. 1-800 Contacts*,

Inc., 615 F.3d 794, 799 (7th Cir. 2010). In addition, the definition of a term may be drawn from the context of the language in the statute. *Env'l. Def. v. Duke Energy Corp.*, 549 U.S. 561, 575 - 576 (2007).

ARGUMENT

I. The January 8, 2014 Receipt Does Not Violate the Truncation Requirements of FACTA

Put as succinctly as possible, the January 8, 2014 receipt does not violate the truncation requirements of FACTA. 15 U.S.C. § 1681c(g)(1) provides a private right of action based on a “receipt provided to the cardholder at the point of the sale or transaction” shall not contain “the last 5 digits of the card number or the expiration date.” 15 U.S.C. 1681c(g)(1). The January 8, 2014 receipt only contained the last four numbers of the Plaintiff’s Visa card, and did not contain the card’s expiration date. Ex. “B”. As a result, the Defendant has not violated FACTA with regard to the January 8, 2014 transaction, and is entitled to summary judgment in its favor.

II. The February 11, 2014 “BMW Rental Agreement for Temporary Substitute Vehicle” Is Not Subject to or Actionable Under FACTA

Plaintiff alleges a violation of FACTA with regard to a February 11, 2014 transaction. However, the only paperwork provided to the Plaintiff on February 11, 2014 was the “BMW Rental Agreement for Temporary Substitute Vehicle”. Ex. “D”. The BMW Rental Agreement is not a receipt and was not printed or provided to the Plaintiff at the point of a sale or transaction. As a result, Defendant did not violate FACTA and summary judgment is appropriate in favor of the Defendant, Elmhurst Auto Werks.

A. The “BMW Rental Agreement for Temporary Substitute Vehicle” Is Not a Receipt

The “BMW Rental Agreement for Temporary Substitute Vehicle” is not a “receipt” as contemplated by FACTA, but instead is a contract wherein the Defendant agreed to loan the Plaintiff a vehicle while mechanical work was performed on her regular vehicle, and in

exchange, the Plaintiff agreed to allow her Visa card to be charged in the future in the event of certain mileage or gas overages. Ex. “D”. As a result, Defendant cannot be liable under FACTA for the alleged February 11, 2014 BMW Rental Agreement, and summary judgment is appropriate in favor of Elmhurst Auto Werks and against the Plaintiff and prospective class.

As discussed above, FACTA does not provide a definition for a “receipt.” In the absence of a statutory definition, the meaning of the word “receipt” can be determined by common understanding, such as in a dictionary, or the context of the surrounding language in the statute.

Shlahtichman v. 1-800 Contacts, Inc., 615 F.3d 794, 799 (7th Cir. 2010). *Env'tl. Def. v. Duke Energy Corp.*, 549 U.S. 561, 575 - 576 (2007). Merriam Webster’s Dictionary defines “receipt” as: “A piece of paper on which the things that you buy or the services that you pay for are listed with the total amount paid and the prices for each.” “Receipt.” *Merriam-Webster Online Dictionary*. 2014. <http://www.merriam-webster.com/dictionary/receipt> (Apr. 1 2014). The Oxford English Dictionary defines “receipt” as: “A written or printed statement acknowledging that something has been paid for or that goods have been received.” *Oxford Dictionaries Online*. 2014. http://www.oxforddictionaries.com/us/definition/american_english/receipt (Apr. 1, 2014).

The BMW Rental Agreement does not fall within either of these definitions. The Merriam Webster definition requires the BMW Rental Agreement to list “things that you buy” or “services that you pay for” with “the total amount paid”. Innately, a “receipt” memorializes that money was received for good or services – in the case of a credit card receipt, that a specific card was used to pay for charges for those goods or services. The BMW Rental Agreement does not acknowledge or memorialize that money was received or a credit card charged for goods and services; rather, it is an agreement that in the event the Plaintiff meets certain conditions, the listed card under “Method of Payment” may be charged for gas, a mileage fee or damage to the

loaner vehicle. Notably, the subject Visa card was not charged on February 11, 2014 or any other day for any of the conditions, services or fees itemized on the BMW Rental Agreement, thus supporting the argument that the BMW Agreement cannot be a receipt because it does not memorialize an actual payment or charge for goods or services. Ex. "D". Ex. "E", ¶¶ 5 - 7.

As further support, the plain language of FACTA supports that the BMW Rental Agreement is not a "receipt." 15 U.S.C. 1681c(g)(3) sets the time period for compliance with the FACTA truncation and expiration date requirements for "any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions." 15 U.S.C. 1681c(g)(3). The BMW Rental Agreement is not a "receipt for [a] credit or debit card transaction", as further discussed below, because no "transaction" was actually performed with the subject Visa card listed in the "Method of Payment" section. Ex. "E", ¶¶ 5 – 7. Instead, the BMW Rental Agreement is a contract reflecting a possible "transaction" in the event of the above-referenced events, and in fact, the contract was never culminated because the Plaintiff did not sign the BMW Rental Agreement, and no charges were placed on her Visa card. See Exhibit "D", "You authorize us to process a credit/debit card voucher in Your name for all charges due under this Agreement. Your signature below is considered made on the applicable credit/debit voucher." At the very least, the BMW Rental Agreement is an offer of a contract. Ex. "D". Under Illinois law, the existence of a contract is a question of law. *Bus. Sys. Eng'g, Inc. v. IBM*, 520 F. Supp. 2d 1012, 1018 (N.D. Ill. Oct. 11, 2007). Summary judgment is appropriate in favor of the Defendant and against the Plaintiff with regard to the February 11, 2014 rental agreement.

B. The "BMW Rental Agreement for Temporary Substitute Vehicle" Was Not Provided to the Plaintiff at the "Point of Sale or Transaction"

The BMW Rental Agreement also does not violate FACTA because it was not provided to the Plaintiff "at the point of sale or transaction". Once again, FACTA and the FCRA do not

provide definitions for “point of sale” or “transaction.” 15 U.S.C. 1681a. Regardless, as there was no “sale” associated with the BMW Rental Agreement, it was not printed at the “point of sale” and does not violate FACTA. Ex. “E”, ¶¶ 5 – 7. Likewise, the BMW Rental Agreement was not provided to the Plaintiff at the point of a transaction contemplated under FACTA. Plainly, based on its name, the purpose of Fair and Accurate Credit Transactions Act is regulate credit and debit card transactions, and therefore “transaction” under § 1681c(g)(1) should be understood as a credit or debit card transaction.

Merriam-Webster Dictionary defines “transaction” as “a business deal: an occurrence in which goods, services, or money are passed from one person, account, etc., to another” or “something transacted; especially: an exchange or transfer of goods, services, or funds.” “Transaction.” *Merriam-Webster Online Dictionary*. 2014. <http://www.merriam-webster.com> (Apr. 1 2014). Here, there was no credit or debit card “transaction” because money was not passed from Plaintiff to Defendant via her Visa card. Ex. “E”, ¶¶ 5 – 7. The January 8, 2014 receipt evidences the contrast: when an actual credit or debit card transaction took place, Defendant complied with FACTA and the printed receipt did not contain the expiration date for the Plaintiff’s Visa card. Ex. “B”. In the absence of a receipt printed and provided to the Plaintiff “at the point of sale or transaction”, there can be no violation of FACTA, and summary judgment is appropriate in favor of the Defendant.

WHEREFORE the Defendant, ELMHURST AUTO WERKS, LTD. d/b/a ELMHURST BMW, LTD., by and through its attorneys, LANGHENRY, GILLEN, LUNDQUIST & JOHNSON, LLC, requests this Honorable Court enter an order granting summary judgment in this matter pursuant to Federal Rule of Civil Procedure 56 in favor of Defendant, ELMHURST

AUTO WERKS, LTD. d/b/a ELMHURST BMW, LTD. and against the Plaintiff, EMIGUELA PACI, and any additional relief this Honorable Court deems just and equitable.

Respectfully submitted,
ELMHURST AUTO WERKS, LTD.,

By: s/ Christopher R. Dunsing
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that the foregoing Memorandum of Law in Support of Motion for Summary Judgment and supporting documents referenced herein were filed and served through the ECF system with the United States District Court for the Northern District of Illinois for delivery to registered participants for the litigation in which said document has been filed.

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[capitalone360.com](#)**receipt***noun* [Viewed](#)

: a piece of paper on which the things that you buy or the services that you pay for are listed with the total amount paid and the prices for each

: the act of receiving something

receipts : money that a business, bank, or government receives

Full Definition of RECEIPT[g+1](#) Like

1 : RECIPE

2 a *obsolete* : RECEPTACLEb *archaic* : a revenue office

3 : the act or process of receiving

4 : something received —usually used in plural

5 : a writing acknowledging the receiving of goods or money

[See receipt defined for English-language learners »](#)[See receipt defined for kids »](#)**Examples of RECEIPT**

Keep your *receipt* in case you need to return anything.

The form should be completed and returned within 30 days of *receipt*.

Open immediately upon *receipt* of the package.

Our company deposits cash *receipts* every day.

Origin of RECEIPT

Middle English *receite*, from Anglo-French, from Medieval Latin *recepta*, probably from Latin, neuter plural of *receptus*, past participle of *recipere* to receive

First Known Use: 14th century

Rhymes with RECEIPT

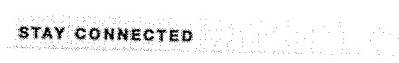
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receipt transitive verb**Definition of RECEIPT**

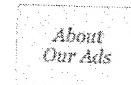
- 1 : to give a receipt for or acknowledge the receipt of
- 2 : to mark as paid

First Known Use of RECEIPT

1787

Other Business Terms

amortize, caveat emptor, clearinghouse, divest, due diligence, emolument, green-collar, marque, overhead, perquisite

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Receipt-expost is directly happening when the transition in actions staged by the offer and acknowledgement of satisfaction while the facets of Business and Commerce

Definition of *receipt* in English:

receipt

Syllabification: re·ceipt

Pronunciation: /rɪ'sept/

/

noun

- 1 The action of receiving something or the fact of its being received: *I would be grateful if you would acknowledge receipt of this letter this office is already in receipt of your midterm grades*
More example sentences
 - As a councillor, I have been in receipt of hundreds of letters from the local community expressing their concerns at the condition of our roads.
 - Talk of a large population of children growing up in welfare dependent homes can be misleading if it ignores the fact that most families in receipt of a benefit do not remain on that benefit for extended periods.
 - The fact that the employee is dismissed while in receipt of his contractual sick pay does not make the termination automatically unfair.
 - [Get more examples](#)

Synonyms

[receiving](#), getting, obtaining, gaining; arrival, delivery

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- 1.1 A written or printed statement acknowledging that something has been paid for or that goods have been received.

More example sentences

- In some parts of the country, criminal gangs will pay homeless people to rummage through dustbins for receipts and bank statements.
- Sometimes I think I'm broke and then I'll find a €50 note nestling between a taxi receipt and an ATM statement.
- A single mother from Stratton is warning people to check their receipts and bank statements after she was charged twice for the same items.
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Synonyms

[proof of purchase](#), bill, [bill of sale](#), invoice, sales ticket

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- 1.2 (**receipts**) An amount of money received during a particular period by an organization or business: *box-office receipts*

More example sentences

- Income tax receipts also include money netted by the Revenue Commissioners from its special investigations into tax evasion.
- A growing number of states are in deficit as declining business profits reduce tax receipts and other revenues.
- According to Professor Spencer, a drop-off in income tax receipts has been the result of the collapse in the technology sector, and the fading fortunes of wealthy financial workers.
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Synonyms

proceeds, takings, money/payment received, income, revenue, earnings; profits, return(s), financial return(s), take

[View synonyms](#)

- 2 • *archaic* A recipe.

More example sentences

- The Ohio testers found that most of the receipts can be made easily with present-day ingredients, techniques, and equipment.
- Romans have always loved eating well (Apicio, who lived in the I century A.D. left a lot of cooking receipts) and today Roman dishes are considered Italian dishes.

verb

[*with object*] (usually as adjective **receipted**) [Back to top](#)

- 1 Mark (a bill) as paid: *the receipted hotel bill*

More example sentences

- Confirmation letters will be sent on receipt of booking and receipted invoices will be sent on receipt of payment, which must be made before the event.
- It is a receipted bill (dated 21 August 1817) from Bennets Hotel in Inverness.
- Only correctly receipted invoices will be acceptable in support of a claim for grant assistance.

- 1.1 Write a receipt for (goods or money): *all fish shall be receipted at time of purchase*

More example sentences

- Balinese ‘traditional’ law then applies: you must reimburse the receipted medical costs of the injured person and are expected to show care, for example, by visiting them in hospital.
- Trade union leaders want some form of tax credit for receipted outlays, a move calculated to inflame feeling among stay-at-home parents who have already been hit by tax individualisation.
- The option of providing tax relief for receipted outlays on childcare is also being examined by a cabinet subcommittee.
- [Get more examples](#)

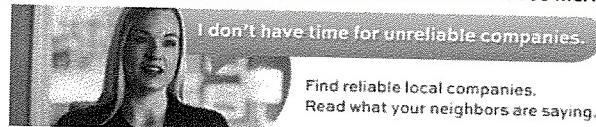
Origin

late Middle English: from Anglo-Norman French *receite*, from medieval Latin *recepta* 'received', feminine past participle of Latin *recipere*. The *-p-* was inserted in imitation of the Latin spelling.

More definitions of receipt

Definition of **receipt** in:

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- The [US English Synonyms](#)



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noun trans-ak-tshən, trans-ēshən

SAY IT

a : a business deal : an occurrence in which goods, services, or money are passed from one person, account, etc., to another

b : the act or process of doing business with another person, company, etc. : the act or process of transacting business

Full Definition of TRANSACTION

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1 a : something transacted; especially : an exchange or transfer of goods, services, or funds *<electronic transactions>*

b plural : the often published record of the meeting of a society or association

2 a : an act, process, or instance of transacting

b : a communicative action or activity involving two parties or things that reciprocally affect or influence each other

— **trans-act-ion-al** *adjective*

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Examples of TRANSACTION

The entire *transaction* took place over the phone.

a record of your recent banking *transactions*

the *transaction* of business over the phone

First Known Use of TRANSACTION

1632

Related to TRANSACTION

Synonyms

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sale fair garage sale jumble sale (*British*) rummage sale
tag sale yard sale

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